IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Revision No.22 of 2003.

Judgment reserved on:14.12.2007

Date of decision: 20.12.2007

Dharam Pal Grover ….Petitioner.

-Versus-

Ashok Kumar ….Respondent

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting? No

For the Petitioner: Mr.R.K.Gautam, Senior Advocate with Mr.Naveen Bhardwaj, Advocate.

For Respondent: Mr.N.K. Thakur, Advocate.

Deepak Gupta, J.

This Revision Petition under Section 24(5) of the H.P. Urban Rent Control Act, 1987 (hereinafter referred to as the Act) is directed against the order of the learned Appellate Authority, Una passed in Rent Appeal No.58 of 2001 decided on 8.10.2002 whereby he has allowed the appeal filed by the landlord and set-aside the order of the learned Rent Controller and ordered the eviction of the tenant on the ground of personal bonafide requirement of the landlord.

The brief facts of the case are that the petitioner is admittedly a tenant in the demised premises under the respondent-landlord. The landlord inherited these premises from his paternal uncle and thereafter filed a petition for eviction of the tenant on various

grounds. The tenant contested the petition. The learned Rent Controller only allowed the eviction of the tenant on the ground of arrears of rent and dismissed the petition on other grounds. The landlord went up in appeal and the learned lower Appellate Authority partly allowed the appeal of the tenant and came to the conclusion that the landlord boanfide requires the premises for his use and occupation.

The only question to be decided in this appeal is whether the landlord has proved that he requires these premises bonafide for his personal use or not. This ground as taken in the petition reads as follows:

> "18(4)(i): That the applicant though is occupying another residential building owned by him in the Una Urban Area, yet neither the same is sufficient to meet the applicant's requirements, nor the same is worth inhabitations, being more than 125 years old and in dilapidated condition as well as not suitable in present way of living."

The landlord before the trial Court had appeared as PW-1. All that he had stated in his evidence was that the house in which he is residing is an old one and the bath room and kitchen is in one room. There is no provision for cross ventilation. He had one son and one daughter. With regard to his bonafide requirement the landlord did not whisper a word. He in his statement stated that he is in occupation of two rooms out of which one room is used as kitchen-cum-bath room. On the other hand his own witness PW-2 had stated that the landlord is in possession of 3 rooms which are in his occupation. The landlord while appearing in the witness box did not make any statement as to what is the exact area which is in his occupation, what is the area in the occupation of the tenant and what

is the requirement of the landlord. The landlord, no-doubt is the best judge of his requirement but when he comes to the Court and seeks eviction of a tenant, he must tell the Court what is his requirement. It is only then that the Court can judge whether the requirement stated by the tenant is bonafide or not. The statement of the landlord in this case is totally cryptic. He in his statement has not spelt out his requirement and has not made out any case for eviction of the tenant.

In appeal, an application was field for leading additional evidence and the landlord was allowed to lead additional evidence. Even while appearing as AW-1 the landlord made no further statement except to prove on record the plan Ext.AW-1/A with respect to the accommodation possessed by him.

Shri Naresh Thakur, learned counsel for the landlord has vehemently urged that this Court should look into both the maps and compare the accommodation and then come to the conclusion as to whether accommodation in the possession of the landlord is sufficient for him or not. A Court has to adjudicate upon the matter and cannot take upon itself the partisan role of a witness. It is for the party to lead appropriate evidence in judicial proceedings to show that he bonafide requires the premises. The learned lower Appellate Authority has in its judgment taken into consideration the facts which have neither been pleaded nor proved by the landlord. The landlord had not stated a single word that there was a store in his possession. In fact he had stated that he is only in possession of two rooms out of which one was being used as a kitchen-cum-bath room.

Confronted with the statement of his own witness that there are three rooms the landlord moved an application for leading additional evidence. On this application having been allowed the map was proved which showed that the 3rd room measuring 2.90 mts. X 2.60 mts. is also there. The landlord though appearing in the witness box did not state that he was using this room as a store but the appellate authority made out a case that this room was being used as a store and must be used for storing trunks, boxes etc. When the landlord had not stated these facts how could the Court itself presume the existence of such facts. The learned lower appellate Court totally mis-directed itself while deciding the case. It has palpably misread the evidence and while deciding the case and has relied upon the material neither pleaded nor proved before it.

Reliance placed by Sh.N.K.Thakur, learned counsel for the landlord in **Kailash Chand and another vs. Dharam Dass, (2005) 5 SCC 375,** is totally misplaced. If a landlord proves his bonafide requirement the Court is bound to order eviction of the tenant. But in this case the landlord has virtually led no evidence to show what is his requirement leave alone the bonafide requirement. He did not state the ages of his children, whether they are minor, whether they are residing with him etc. He gave no indication as to what were his requirements.

The trial Court has rightly rejected his petition on this ground. The appellate Authority has totally misread the evidence and therefore order passed in Rent Appeal No.58 of 2001 dated 8.10.2002 of the lower Appellate Authority is set-aside and the order

of the learned Rent Controller dated 25.6.2001 passed in Rent Petition (RBT) No.15 of 1998 is upheld. The Revision Petition is accordingly allowed. No order as to costs.

December 20, 2007 **(Deepak Gupta),**
PV **Judge**